

RETURN RECORDED DOCUMENT TO:

AXA Equitable AgriFinance, LLC
4333 Edgewood Road NE
Cedar Rapids, Iowa 52499
Attention: Investment Officer

Loan No. 60719141

Land Title and Escrow

01-170466-56

**SUBORDINATION, NONDISTURBANCE, ATTORNMENT AND ESTOPPEL
AGREEMENT**

(Tenant Subordinating Lease to AXA)

201901310012

THIS SUBORDINATION, NONDISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT (this "Agreement") is made and entered into as of January 31st, 2019, by AXA Equitable Life Insurance Company ("Lender"), Harmony Dairy, LLC, a Washington limited liability company ("Tenant"), and Dirk Vander Kooy aka Dick Vander Kooy aka Dick J. Vander Kooy and Olga Marie Vander Kooy aka Olga Vander Kooy aka Olga M. Vander Kooy ("Owner") to and for the benefit of Owner, Lender and Tenant (each a "Party" and collectively, the "Parties").

RECITALS

A. Lender is about to extend financing in the amount of Three Million and No/100 Dollars (\$3,000,000.00) to be secured by that certain mortgage or deed of trust ("**Mortgage**") granted by Owner, as grantor, and to be recorded in the official real property records of Skagit County, Washington (the "**Records**"), encumbering the real property described in Exhibit A attached hereto (the "**Property**").

* B. Owner and Tenant are parties to that certain Lease of Agricultural Property dated * July 1, 2014, (the "**Lease**") * Unrecorded

C. The Lease grants Tenant, and its successors and assigns, certain rights to use the Property and Tenant has expended (or plans to expend) financial and other resources in use of such rights.

D. Either: (i) Tenant has requested, and Lender has agreed, subject to the terms of this Agreement, that Tenant's rights under the Lease will not be disturbed by Lender pursuant to any exercise of Lender's rights under the Mortgage; or (ii) Lender has conditioned the closing of the financing to be secured by the Mortgage on the execution of this Agreement.

NOW, THEREFORE, in consideration of the premises and in consideration of ten dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Lender and Tenant, Owner, Lender and Tenant hereby agree as follows:

AGREEMENT

1. Subordination. The Lease and each and every term and condition thereof, and any extensions, renewals, replacements or modification thereof, and all of the right, title and interest of Tenant in and to the Property are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, all advances made or to be made thereunder, and to any renewals, modifications, supplements, replacements, consolidations increases or extensions thereof.

2. Estoppel. Tenant certifies to Lender, holder or proposed holder of a promissory note or other obligation secured or to be secured by the Mortgage upon the Property, and to its successors and assigns and any participant with Lender in such loan, that: the Lease is presently in full force and in effect and unmodified except as indicated at the end of this Agreement; the term thereof has commenced and the full rental is now accruing thereunder; in addition to the basic rent payable under the Lease, Tenant is paying any amounts of additional rent set forth in the Lease; Tenant has accepted possession of the Property, or any portion thereof, is currently operating its business thereon, and any improvements required by the terms of the Lease to be made by Owner have been completed to the satisfaction of Tenant; no rent under the Lease has been paid more than 30 days in advance of its due date; the address for notices to be sent to Tenant is as set forth below; and Tenant, as of this date, has no charge, lien, or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder.

3. Non-Disturbance. Lender covenants and agrees with the Tenant that, provided that the Lease is in full force and effect and no default of the Tenant exists thereunder beyond the grace periods which apply thereto, the Tenant's right to possession of the Property, and the terms and provisions of the Lease, shall not be affected or disturbed by Lender in the exercise of any of its rights under the Mortgage or of any rights otherwise available to Lender at law or in equity, including, without limitation, foreclosure of the Mortgage or conveyance of the Property in lieu of foreclosure of the Mortgage.

4. Attornment. If a Successor Owner (as hereinafter defined) comes into possession or ownership of the Property, then (i) such Successor Owner shall (A) thereby succeed to the position of the Owner under the Lease and (B) not disturb the possession of the Tenant except in accordance with the terms of the Lease, (ii) the Lease shall continue in full force and effect and (iii) Tenant shall attorn to such Successor Owner. “**Successor Owner**” means any person or entity (including, without limitation, Lender or any nominee or designee of Lender) that shall acquire possession or ownership of the Property by reason of foreclosure of the Mortgage, any other exercise by Lender of rights and remedies available to Lender as holder of the Mortgage or conveyance of the Property in lieu of foreclosure of the Mortgage.

5. Successor Liability. Notwithstanding anything to the contrary contained in this Agreement or in the Lease, in the event that a Successor Owner acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or under applicable law or as a result of a deed-in-lieu of foreclosure, Successor Owner shall not be:

(a) liable for any act or omission of Owner which occurs prior to the date Successor Owner obtains title to the Property or any obligation of Owner to perform or incur any liability with respect to the completion of improvements to be located on the Property; or

(b) bound by any payment made by Tenant to Owner for periods extending more than six months beyond the date on which Successor Owner obtains title to the Property or by any security deposit Tenant may have paid to Owner and not received by Lender; or

(c) bound by any material amendments to the Lease entered into without the written consent of Lender, not to be unreasonably withheld or delayed.

In the event that Lender acquires title to the Property, Lender shall have no obligation nor incur any liability beyond Lender's then equity interest in the Property.

6. Assignment of Rents. Owner and Tenant hereby agree that any and all amounts payable to Owner pursuant to the terms of the Lease or any other document related thereto, including but not limited to any rent, signing fee, operating fee, initial lease payment, extension payment, acreage allowance, base rent, royalty rent, minimum rent, contract rate, construction bonus, or any rents, royalties, or monies of all similar kinds or nature are “rents, issues, royalties, income and/or profits” as described in the Mortgage and have been pledged to Lender pursuant to the terms of the Mortgage (“**Rents**”). Owner hereby irrevocably authorizes and directs Tenant, upon receipt from Lender of written notice to do so, to pay all Rents payable by Tenant to or as directed by Lender. Owner irrevocably releases Tenant from any liability to Owner for all payments so made. Tenant agrees that upon receipt of such notice it will pay all Rents then due and becoming due from Tenant to or as directed by Lender, notwithstanding any provision of the Lease to the contrary.

7. Covenants of Tenant. Tenant covenants and agrees as follows:

(a) Tenant shall send a copy of any default notice under the Lease to Lender at the same time Tenant sends such default notice to Owner.

(b) Tenant has no right or option of any nature to purchase the Property or any portion of the Property or any interest in the Owner. To the extent Tenant has or acquires any such right or option, those rights or options are acknowledged to be subject and subordinate to the Mortgage and are of no force and effect as to Lender and any Successor Owner or with regard to any conveyance by Lender or any Successor Owner.

8. Conflicting Terms. To the extent the terms of this Agreement are inconsistent with the terms of the Lease, the conflicting terms of the Lease shall be deemed amended hereby to incorporate the terms contained herein.

9. Enforcement. The Parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement, the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

10. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

11. Successors. The terms and provisions of this Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors and assigns and, without limiting the generality of the foregoing, are specifically intended to be relied upon and be enforceable by any successor and assign of Tenant, and any person holding a lien against any estate or interest in or under the Lease or any part thereof.

12. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements between the Parties with respect to the priority of the Mortgage and the Lease and the effect of a foreclosure or trustee's sale of the Mortgage (or conveyance in lieu thereof) on the Lease, and comprises the entire agreement of the Parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the Party to be charged therewith.

13. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

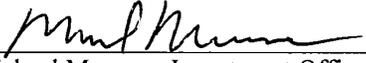
14. Execution in Counterparts. This Agreement may be executed in counterparts, all of which shall constitute one and the same contract.

15. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located, without regard to those governing conflicts of law.

IN WITNESS WHEREOF, Lender has duly executed this Agreement as of the date and year first above written.

LENDER:

AXA Equitable Life Insurance Company, a
New York corporation

By: 
Michael Mercure, Investment Officer *M/M*

Address:

AXA Equitable Life Insurance Company
Sixteenth Floor, 1290 Avenue of the Americas
New York, NY 10104

With copy to:

AXA Equitable AgriFinance, LLC
6300 C Street SW, MS 3B-CR
Cedar Rapids, Iowa 52499
Attention: Investment Officer

STATE OF IOWA)
) SS:
COUNTY OF LINN)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 18 day of January, 2019, personally appeared Michael Mercure, to me known to be the identical person who subscribed the name of Lender to the foregoing instrument as an Investment Officer, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

GIVEN under my hand and seal of office the day and year last above written.

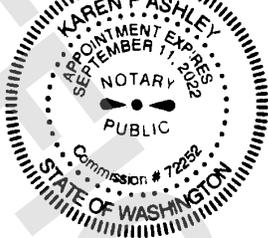


Terry L. McClain
Notary Public

My commission expires:

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

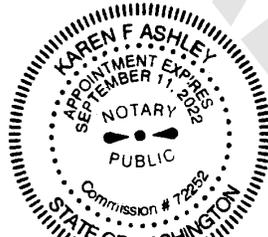
The foregoing instrument was acknowledged before me this 28 day of January, 2019, by Eric R. Vander Kooy, Manager of Harmony Dairy, LLC.



Karen Ashley
Notary Public
My commission expires: 9-11-2022
Commission No.: 72252

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

The foregoing instrument was acknowledged before me this 28 day of January, 2019, by Jason L. Vander Kooy, Manager of Harmony Dairy, LLC.



Karen Ashley
Notary Public
My commission expires: 9-11-2022
Commission No.: 72252

IN WITNESS WHEREOF, Owner has duly executed this Agreement as of the date and year first above written.

Dirk Vander Kooy aka Dick Vander Kooy
and Dick R. Vander Kooy

Olga Marie Vander Kooy aka Olga M.
Vander Kooy

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

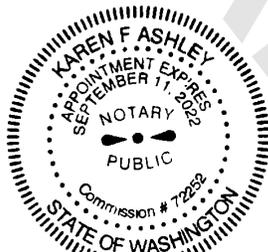
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Karen Ashley
Notary Public
My commission expires: 9-11-2022
Commission No.: 72252

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

The foregoing instrument was acknowledged before me this 28 day of January, 2019, by Jason L. Vander Kooy, Manager of Harmony Dairy, LLC.



Karen Ashley
Notary Public
My commission expires: 9-11-2022
Commission No.: 72252

IN WITNESS WHEREOF, Owner has duly executed this Agreement as of the date and year first above written.

Dirk Vander Kooy
Dirk Vander Kooy aka Dick Vander Kooy
and Dick R. Vander Kooy

Olga Marie Vander Kooy
Olga Marie Vander Kooy aka Olga M.
Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

I, Karen Ashley, a notary public in and for said county and state, do hereby certify that on this 28th day of January, 2019, personally appeared before me the within named Dirk Vander Kooy aka Dick Vander Kooy aka Dick R. Vander Kooy to me known to be the individual described in and who executed and whose name is subscribed to the within and foregoing instrument, and duly acknowledged to me that he signed and executed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

(SEAL)

Karen Ashley
Notary Public

My Commission Expires: 9-11-2022



STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

I, Karen Ashley, a notary public in and for said county and state, do hereby certify that on this 28th day of January, 2019, personally appeared before me the within named Olga Marie Vander Kooy aka Olga Vander Kooy aka Olga M. Vander Kooy to me known to be the individual described in and who executed and whose name is subscribed to the within and foregoing instrument, and duly acknowledged to me that she signed and executed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

(SEAL)

Karen Ashley
Notary Public

My Commission Expires: 9-11-2022



EXHIBIT A

LEGAL DESCRIPTION

PARCEL "A":

The South 16.5 feet of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 34, Township 34 North, Range 3 East, W.M., EXCEPT Bradshaw Road along the West line thereof. (Also shown as Parcel A of Survey recorded March 14, 2007, under Auditor's File No. 200703140049.)

Situate in the County of Skagit, State of Washington.

PARCEL "B":

The Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 34, Township 34 North, Range 3 East, W.M. (Also shown as Parcel A of Survey recorded March 14, 2007, under Auditor's File No. 200703140049.)

Situate in the County of Skagit, State of Washington.

PARCEL "C":

Government Lot 3, Section 3, Township 33 North, Range 3 East, W.M.

EXCEPT from the above described Parcels a, b AND c, all ditch and dike rights of way. (Also shown as Parcel A of Survey recorded March 14, 2007, under Auditor's File No. 200703140049.)

Situate in the County of Skagit, State of Washington.

PARCEL "D": (INTENTIONALLY OMITTED)PARCEL "E":

The East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 16 and the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 21, all in Township 34 North, Range 3 East, W.M.,

EXCEPT the West 30 feet of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 21, as conveyed to Skagit County by Deeds recorded February 2, 1904 in Volume 54 of Deeds, page 122 and recorded November 20, 1967, under Auditor's File No. 707100, records of Skagit County, Washington,

AND EXCEPT drainage ditch rights of way, if any.

Situate in the County of Skagit, State of Washington.

PARCEL "F":

A non-exclusive easement for ingress and egress, over and across the West 20 feet of the Southwest ¼ of the Northeast ¼ of Section 21, Township 34 North, Range 3 East, W.M., as conveyed by Deed from Joseph E. Ewing, et ux, recorded May 13, 1997, under Auditor's File No. 9705130028, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

PARCEL "G":

Lot 2 of Skagit County Short Plat No. 93-077, approved November 3, 1993 and recorded November 4, 1993, in Volume 11 of Short Plats, pages 9 and 10, under Auditor's File No. 9311040064, records of Skagit County, Washington; being a portion of Government Lots 1 and 2, Section 3, Township 33 North, Range 3 East, W.M., and the Southeast ¼ of Section 34, Township 34 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "H":

Government Lot 8 in Section 2, Township 33 North, Range 3 East, W.M. and Government Lot 1 in Section 11, Township 33 North, Range 3 East, W.M.,

EXCEPT Dike District No. 1 as condemned by decree entered in Skagit County Superior Court Cause No. 3049.

ALSO EXCEPT a tract of land in Government Lot 1 of Section 11, Township 33 North, Range 3 East, W.M., and in Government Lot 8 of Section 2, Township 33 North, Range 3 East, W.M., described as follows:

Beginning at a point on the West line of said Lot 1 of Section 11, 362.82 feet South of the Northwest corner thereof; (the West line of said Section 11 bears South 02°06' West);
 thence North 85°23'20" East 355.72 feet to the P.C. of an 03° curve to the left;
 thence along said 03° curve to the left a distance of 240.35 feet;
 thence North 66°09'70" East a distance of 261.41 feet to the P.C. of a 07°30' curve to the left;
 thence along said 07°30' curve to the left a distance of 242.50 feet to an intersection with the North line of said Section 11;
 thence continuing along said 07°30' curve to the left in said Section 2, a distance of 560.95 feet to the P.T. of said curve and an intersection with the existing dike of Diking District No. 1;
 thence South and Southwesterly along the existing dike to the West line of said Lot 1 of Section 11;
 thence North along the West line of said Lot 1 to the point of beginning.

PARCEL "H" continued:

ALSO EXCEPT the West 30 feet of the South 272 feet to the North 390 feet of Government Lot 1, Section 11, Township 33 North, Range 3 East, W.M., as conveyed to Skagit County for road purposes by Deed recorded November 18, 1974, under Auditor's File No. 810184, records of Skagit County, Washington.

ALSO EXCEPT Tract A, Short Plat No. 59-74, as approved November 19, 1974, recorded in Volume 1 of Short Plats, page 7, under Auditor's File No. 810207, records of Skagit County, Washington; being a portion of Government Lot 1 in Section 11, Township 33 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "I"

The Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 33 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "J": (INTENTIONALLY OMITTED)

PARCEL "K":

The Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ Section 16, Township 34 North, Range 3 East, W.M.;

EXCEPT all ditch and dike rights of way;

Situate in the County of Skagit, State of Washington.

PARCEL "L":

The Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 16, Township 34 North, Range 3 East, W.M.;

EXCEPT all ditch and dike rights of way;

Situate in the County of Skagit, State of Washington.

PARCEL "M":

That portion of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 34 North, Range 3 East, W.M., described as follows:

Beginning at the Southwest corner of said subdivision;
thence North along the West line thereof 150 feet, more or less, to the center of Higgens Slough;
thence Southeasterly along the center of Higgens Slough to the South line of said Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$;
thence West along said South line 165 feet, more or less, to the point of beginning,

EXCEPT that portion, if any, lying within the boundaries of the following described tract:

The West 20 feet of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 16, EXCEPT the South 150 feet thereof,

AND ALSO EXCEPT all ditch and dike rights of way, if any;

Situate in the County of Skagit, State of Washington.

PARCEL "N":

The West 10 feet of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the East 10 feet of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, lying South of the road, Section 16, Township 34 North, Range 3 East, W.M.;

AND ALSO EXCEPT all ditch and dike rights of way, if any;

Situate in the County of Skagit, State of Washington.